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6 **THE DISTRICT COURT OF GUAM**

7
8 RONALD PARKER, FA'AFETAI PARKER
9 and TUALAGI GAOTEOTE, on behalf of
themselves and all others similarly situated,

10 Plaintiff,

11 vs.

12 ANZ GUAM INC.,

13 Defendant.

14 CIVIL CASE NO. 18-00010

15
16 **ORDER DENYING DEFENDANT'S**
17 **MOTION TO DISMISS CLAIMS AND**
18 **TO STRIKE ALLEGATIONS**

19 Before the court are Defendant ANZ Guam, Inc's ("ANZ's") Motion to Dismiss Claims
20 and to Strike Allegations in Complaint, ECF No. 16, and ANZ's Motion to Stay Discovery, ECF
21 No. 22. After having reviewed the parties' briefs, relevant cases, and statutes, and having
22 listened to the recording of the hearing before Magistrate Judge Manibusan on November 30,
23 2018, the court hereby **DENIES** Defendant's motion for the reasons stated herein.

24
25 **I. BACKGROUND**

26 On March 21, 2018, Plaintiffs Ronald Parker, Fa'afetai Parker, and Tualagi Gaoteote
27 (combined, "Plaintiffs") filed a class action lawsuit against Defendant ANZ. Compl. at 2, ECF
28 No. 1. According to that Complaint, the Parkers granted ANZ a mortgage on their property in
29

1 2005, and Gaotete granted ANZ a mortgage on his property in 2010.¹ *Id.* at 4-5. Plaintiffs allege
2 that ANZ has failed to provide statutorily-required periodic loan statements and interest rate
3 adjustment notices. *Id.* at 13. Plaintiffs seek to represent three classes of individuals: (1) ANZ
4 mortgagees “who are entitled to receive periodic statements and did not,” (2) ANZ mortgagees
5 “who did not receive notice of an increase to the interest rate of their mortgages in a timely or
6 adequate manner,” and (3) ANZ mortgagees “who were charged fees . . . in amount [sic] that
7 exceeds the limits stated in their mortgages.” *Id.* at 19-20. Plaintiffs assert four causes of action:
8 (I) Violations of the Truth in Lending Act (TILA) and Regulation Z (12 C.F.R. § 1026) due to
9 ANZ’s alleged inadequate periodic statements, (II) Violations of TILA and Regulation Z due to
10 ANZ’s alleged inadequate rate increase notices, (III) Breach of contract due to ANZ’s alleged
11 excessive late fee charges, (IV) Unjust enrichment, and (V) Breach of the covenant of good faith
12 and fair dealing. *Id.* at 22-26. In addition to monetary damages, Plaintiffs seek to enjoin ANZ
13 from future violations. *Id.* at 26-27.

14 On June 8, 2018, Defendant ANZ filed a Motion to Dismiss Claims and to Strike
15 Allegations in Complaint. Mot. Dismiss, ECF No. 16. Plaintiffs opposed, ECF No. 24, and ANZ
16 replied in support, ECF No. 26. On November 30, 2018, Magistrate Judge Manibusan heard this
17 matter.

18 **II. DISCUSSION**

19 **A. Motion to Dismiss Counts I and II**

20 Defendant ANZ moves to dismiss Counts I and II under Rule 12(b)(6), arguing that
21 Plaintiffs’ claims are time-barred by 15 U.S.C. § 1640(e), which requires TILA actions to be
22 brought “within one year from the date of the occurrence of the violation.” Mot. Dismiss at 7,
23 ECF No. 16-1.

24 ¹ For the purposes of resolving the instant motion, all allegations within the Complaint are taken as true.

1 “A statute-of-limitations defense, if apparent from the face of the complaint, may
2 properly be raised in a motion to dismiss.” *Seven Arts Filmed Enter. Ltd. v. Content Media Corp.*
3 *PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (internal quotation marks omitted).

4 ANZ argues that Plaintiffs’ claims are time-barred because the mortgage was executed in
5 2005, and Gaoteote’s in 2010—both more than one year before Plaintiffs filed their Complaint in
6 2018. *Id.* at 14. ANZ relies on *King v. State of California*, 784 F.2d 910, 915 (9th Cir. 1986), for
7 the proposition that “the limitations period [in Section 1640(e)] starts at the consummation of the
8 transaction”—that is, at the origination of the mortgage. In *King*, the Ninth Circuit Court of
9 Appeals held that Section 1640(e) barred a claim for damages against a lender for failing to
10 disclose information at the origination of the loan, when the claim was brought more than one
11 year after that time. *Id.* In so holding, the Ninth Circuit rejected a “continuing violation” theory
12 as “unrealistically open-ended,” exposing “the lender to a prolonged and unforeseeable liability
13 that Congress did not intend.” *Id.* at 914.

14 Plaintiffs respond that the 15 U.S.C. § 1640(e) triggering event is not the origination of
15 the mortgage, but rather the dates of ANZ’s allegedly deficient (or nonexistent) disclosures. Opp.
16 at 10, ECF No. 24. Unlike the nondisclosure in *King*, the alleged violations in this case are not
17 failures to disclose at the origination of the loan agreements, but rather ANZ’s failure to provide
18 adequate periodic statements and interest rate adjustment notices. Complaint at 11, 22-23, ECF
19 No. 1. ANZ has an ongoing statutory obligation to provide those statements and notices to
20 mortgagors. *See* 15 U.S.C. § 1638(f) (setting forth requirements for periodic statements for
21 residential mortgage loans); 12 C.F.R. § 1026.20(c)(2)(ii) (setting forth notice requirements “in
22 connection with the adjustment of interest rates”).

23 Under Defendant ANZ’s interpretation of the 15 U.S.C. § 1640(e) statute of limitations, a
24 lender could never face liability for TILA and Regulation Z notice violations that occur more

1 than one year into the life of the mortgage. In addition to rendering 15 U.S.C. § 1638(f)
2 practically unenforceable one year into a mortgage, that result would contradict the stated
3 legislative purpose of TILA “to assure a meaningful disclosure of credit terms . . . to protect the
4 consumer against inaccurate and unfair credit billing and credit card practices.” 15 U.S.C. §
5 1601(a); *see also Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1118 (9th Cir. 2009)
6 (“To effectuate TILA’s purpose, a court must construe the Act’s provisions liberally in favor of
7 the consumer and require absolute compliance by creditors.” (internal quotation marks omitted)).

8 Therefore, this court concludes that the Section 1640(e) limitations period begins to run
9 when the alleged violations of 15 U.S.C. § 1638(f) and C.F.R. § 1026.20(c)(2)(ii) occur. Thus,
10 while Plaintiffs cannot recover for inadequate (or nonexistent) disclosures dating over a year
11 before they filed their Complaint,² Section 1640(e) permits them to recover for disclosure
12 violations that occurred within the year before they filed suit. Accordingly, Defendants’ motion
13 to dismiss Counts I and II is **denied**.

14 **B. Whether to strike class allegations**

15 Defendant ANZ additionally moves, pursuant to Rule 12(f), to strike class allegations
16 from Plaintiffs’ Complaint. Mot. Dismiss at 9, ECF No. 16-1.

17 ANZ concedes that motions to strike class allegations at the pleadings stage are
18 “generally disfavored due to the lack of a developed factual record,” *Pepka v. Kohl’s Dep’t*
19 *Stores, Inc.*, No. CV-16-4293, 2016 WL 8919460, at *1 (C.D. Cal. Dec. 21, 2016). Nonetheless,
20 Defendant correctly notes that courts have struck class allegations without permitting discovery
21 “where the matter is sufficiently obvious from the pleadings.” *Stokes v. CitiMortgage, Inc.*, No.
22 CV 14-00278, 2015 WL 709201, at *4 (C.D. Cal. Jan. 16, 2015) (internal quotation marks
23 omitted). Put another way, a district court may strike class allegations “[i]f it is obvious from the

24 ²As ANZ correctly notes, Reply at 2 n.1, ECF No. 26, Plaintiffs have not alleged that *King*’s equitable tolling exception applies to this case. *See* 784 F.2d at 914-15.

1 pleadings that the proceeding cannot possibly move forward on a classwide basis.” *Manning v.*
2 *Boston Med. Ctr. Corp.*, 725 F.3d 34, 59 (1st Cir. 2013).

3 ANZ presents three arguments as to why this court should strike the class allegations.
4 First, ANZ argues that Plaintiffs’ proposed classes are impermissible fail-safe classes. Mot.
5 Dismiss at 10, ECF No. 16-1. Second, ANZ argues that Plaintiffs’ classes include time-barred
6 claims. *Id.* at 13. Third and last, ANZ argues that Plaintiffs’ proposed “Rate Increase Class” and
7 “Late Fee Class” improperly require individualized inquiries into the putative class members. *Id.*
8 at 15.

9 Plaintiffs respond that the present pleadings stage is not the proper time to address class
10 certification issues. Opp. at 16-17, 22 (citing abundant Ninth Circuit district courts that have
11 deferred motions to strike class allegations until the class certification stage); *see, e.g.*,
12 *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp.2d 1220, 1245-46 (C.D. Cal. 2011)
13 (collecting cases for the proposition that it is “rare” to strike class allegations “in advance of a
14 motion for class certification”). Plaintiffs further argue that any potential “fail-safe” issue should
15 be remedied by simply redefining the class, rather than striking class allegations altogether. Opp.
16 at 23, ECF No. 24; *see, e.g.*, *In re AutoZone, Inc.*, 289 F.R.D. 526, 546 (N.D. Cal. 2012) (noting
17 that fail-safe issues can be remedied through redefinition of the class). Finally, Plaintiffs argue
18 that this court should allow discovery to develop before considering a motion to strike class
19 allegations. *Id.* at 24; *see Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir.
20 2009) (“Our cases stand for the unremarkable proposition that often the pleadings alone will not
21 resolve the question of class certification and that some discovery will be warranted.”).

22 Again, this court agrees with Plaintiffs. The heart of Plaintiffs’ class action lawsuit is that
23 Defendant ANZ has systematically failed to provide notices required by TILA and Regulation Z.
24 TILA contemplates class action lawsuits of this type. 15 U.S.C. § 1640(a). While there may be

issues with the class definitions proposed within Plaintiffs' complaint, it cannot be said that the case "cannot possibly move forward on a class wide basis." *Manning*, 725 F.3d at 59. Accordingly, Defendants' Rule 12(f) motion to strike class allegations is **denied**.

III. CONCLUSION

For the foregoing reasons, ANZ's Motion to Dismiss Claims and Strike Allegations in Complaint is **DENIED**. ANZ's Motion to Stay Discovery is likewise **DENIED** as it is now moot.

SO ORDERED.



**/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Mar 29, 2019**